

1 A That is correct.

2 Q You have read the opinion enough times to
3 be comfortable with these questions, haven't you?

4 A Yes, as along as you understand, I am
5 answering them from the perspective of an economist.

6 Q Understood.

7 A And the framework of analysis. And your
8 question earlier that started this discussion asked
9 what the Court found and whether it was talking about
10 all the poles or the poles specific to the case. What
11 I am trying to say is in the language of it I am
12 citing here, this is very generic language that would
13 apply to all poles.

14 Q But that is not what the Court was
15 applying that language to in the decision?

16 A Well, I'll leave that obviously up to the
17 lawyers to decide in terms of what the Court was
18 addressing, and I don't -- wouldn't venture to talk
19 about precedent or anything like that. I'm talking
20 about economics that the Court cites in that decision,
21 and that's what my testimony addresses, the underlying
22 concepts of full capacity and lost opportunity and

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1 economic reality. That's what my testimony addresses
2 and those are generic discussions of the properties of
3 poles.

4 Q So to be clear, you are not here today
5 offering an opinion on whose poles, if any, the Court
6 decided were nonrivalrous?

7 A I -- again, I don't want to get into a
8 discussion of my interpretation of what the decision
9 applied to or didn't apply to. But as far as the
10 finding of rivalrous, the Court has a discussion as to
11 under what conditions poles would be rivalrous or not
12 rivalrous. I don't believe they made a finding as
13 toward that. It was more to the extent of setting
14 forth criteria upon which an evidentiary review would
15 be made, and that's why we're here in this case.

16 Q Ms. Kravtin, what I asked you is whether
17 you are here offering an opinion on whose poles, if
18 any, the Court found to be nonrivalrous in the Alabama
19 Power case.

20 A Well, again I think I'm having a problem
21 with what seems to be a presumption within your
22 question as to what the Court found.

1 Q I'm not making any presumptions, Ms.
2 Kravtin, and I'm just trying to figure out what you
3 are here testifying about and what you're not.

4 A Could I ask you to repeat your question?
5 Because it did seem to me you were -- that embedded in
6 that was an assumption that the Court made a finding
7 about rivalrous.

8 Q Let me set it up this way. I'm asking you
9 a question that is attempting to figure out what you
10 are or are not here to testify about. Is that a fair
11 purpose?

12 A Yes.

13 Q Are you testifying, are you offering an
14 opinion in this case about whose poles, if any, the
15 Alabama Power court found to be nonrivalrous?

16 A Well, again I don't see it as a question
17 of whose poles; I see it as a question as toward the
18 basis for the criteria laid out by the Court.

19 Q Ms. Kravtin, if you would, please, turn to
20 page 25 of your testimony. Down in the bottom quarter
21 of the page, there is a sentence which reads:

22 "Similarly, where a resource is nonrival,

1 one entity's use of a resource does not diminish or
2 preclude the use by another."

3 Do you see that?

4 A Yes, I do.

5 Q And do you believe that to be a fairly
6 accepted definition of a nonrival resource?

7 A Yes.

8 Q Would you also agree with this definition
9 of nonrival:

10 "A nonrival good is one whose consumption
11 by one person does not diminish its availability for
12 others."

13 A Yes, I think they sound roughly
14 equivalent.

15 Q In the quote from your testimony that I
16 just read, you used the pie analogy, where if one
17 person eats a slice of pie, then the other person's
18 share goes down. Is that accurate?

19 A Yes.

20 Q Ms. Kravtin, I direct your attention to a
21 demonstrative aid that we have -- we have used earlier
22 in this trial. Have you ever seen a diagram like this

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1 before?

2 A Yes, I have.

3 Q And you understand that that represents an
4 average 40-foot pole?

5 A I understand that is Gulf's representation
6 of its contractual agreements regarding a 40-foot
7 pole.

8 Q And you're actually somewhat familiar with
9 those contractual agreements, aren't you?

10 A It depends on what you mean by somewhat
11 familiar. I certainly am familiar with the existence
12 of joint use agreements and understand what generally
13 is involved in them, but I am not really familiar with
14 this particular joint use agreement that apparently
15 these diagrams are based on.

16 Q Not familiar? I mean you actually
17 testified in your written prefiled direct testimony
18 about the space allocations in the joint use
19 agreements?

20 A Yes.

21 Q So you are familiar with the space
22 allocations in those agreements?

1 A Yes. I thought your earlier question
2 asked me if I was very familiar with the agreements
3 themselves.

4 Q That was a bad question.

5 A To the extent I testified on the space
6 allocations are present in those, certainly, yes, I am
7 familiar with that based on my review of depositions
8 and other evidence in this case.

9 Q And so you are aware that under the joint
10 use agreements the space allocation works like this:
11 Gulf has the top 8 1/2 feet. There's 40 inches
12 separation for the communication worker safety zone.
13 And there's 3 feet contracted to the incumbent local
14 exchange carrier.

15 Right now I just want you to answer my
16 question based on your understanding of the joint use
17 agreements.

18 A I'm sorry, did you have a question
19 outstanding?

20 Q I did.

21 A To me?

22 Q Do you want me to repeat it?

1 A I do because I didn't understand that to
2 be a question.

3 Q It was. You understand that under the
4 joint use agreements, a 40-foot pole is allocated as
5 follows: 8-1/2 feet to Gulf, the top 8-1/2 feet; 40
6 inches of separation for the communication worker
7 safety zone; and 3 feet contracted to the incumbent
8 local exchange carrier?

9 A I understand that is Gulf's
10 representation.

11 Q In the joint use agreements?

12 A Yes.

13 Q Which you have testified about?

14 A Yes, I understand that to be Gulf's
15 representation.

16 Q And so what we have here on the screen
17 right now in some ways represents the pie, doesn't it?

18 A I would not agree with that, no.

19 Q Ms. Kravtin, is that because you can bake
20 another pie?

21 A That's because, as I discuss at length in
22 my testimony, what makes poles unique is the

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1 availability of the make-ready process by which poles
2 are augmented and strengthened and rearranged, and
3 that is an inherent part of the way poles are
4 provisioned. So this is one snapshot or one
5 representation. But I don't think it really captures
6 the full pie in terms of how pole space is made
7 available. I think that's discussed at length in my
8 testimony.

9 Q So to use your analogy, as long as you've
10 got apples and flour and eggs, there's no such thing
11 as a pie, a defined pie?

12 A I don't think it's a good analogy. In the
13 case of a pie, if I eat a piece, it really is not
14 available for you to eat a piece. I don't think that
15 that is a good analogy to poles. The issue of
16 rivalrous -- and I want to get back to that definition
17 that you used, and that was -- what it -- what that
18 definition you cited, which I said was generally
19 prevalent but it didn't talk about the important
20 characteristic of rivalrous, which is that it implies
21 an exclusion. So when you talk about available, it
22 would mean that if it's available to one, it's not

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1 available to another.

2 So in the pie example, if I eat it, it's
3 not available to you. In the pole example, you know,
4 an entity could be placed on the pole, but through
5 make-ready that entity's placement wouldn't
6 necessarily preclude another from attaching.

7 Q Let's talk about this pole on the screen
8 right now. The pole represented by this diagram.
9 This 40-foot pole. You can see that; correct?

10 A Yes.

11 Q And if the cable company takes a foot of
12 the usable space, that's a foot of the usable space
13 that Gulf Power cannot use?

14 A You know, in terms of that particular foot
15 of space, again I don't believe that is germane to the
16 economic definition of rivalrous, which would imply
17 exclusion, in terms of exclusion from the pole,
18 because that space on that pole is going to be
19 fungible, and I think in real life, with all the
20 pictures that I've seen -- although Mr. Harrelson will
21 be addressing those in detail. But certainly looking
22 at it in a real-world setting, those wires look like

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1 they're all over the place, and it looked like Gulf
2 was not necessarily just in the space here designated
3 at power space, and there are different relationships
4 of wires of different entities on different places on
5 the pole.

6 Q Ms. Kravtin, you are not offering
7 engineering testimony in this case, are you?

8 A No, I'm not. I indicated Mr. Harrelson
9 would be addressing that aspect of it, but I believe
10 that the pictures that I did review do support what I
11 was just indicating as a difference from this
12 schematic diagram you have up here.

13 Q Then I want to get back to this diagram.

14 A Okay.

15 Q I don't want to talk about what would
16 happen if we changed things around on this diagram or
17 if we put a bigger diagram up. I want to talk about
18 this one for a second.

19 JUDGE SIPPEL: Well, this is the -- one of
20 those demonstrative diagrams that I have asked to be
21 marked and introduced. The witness is testifying to
22 the second one that you used when you started off in

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1 this case; right?

2 MR. LANGLEY: Yes. I was under the
3 impression this had been marked. Am I wrong about
4 that?

5 MR. CAMPBELL: They have not been marked.
6 We were going to do that as a housekeeping item and
7 clean that up with the court reporter. We haven't
8 gotten to that yet, given our schedule.

9 JUDGE SIPPEL: No, this is not a
10 criticism. I just wanted to be -- I'm just trying to
11 clarify the record, you know, three months from now.
12 What we're looking at, is this called a stick diagram
13 or something like that?

14 MR. CAMPBELL: I think that's a good
15 handle to put on it. It's called a stick diagram.

16 JUDGE SIPPEL: So this is no -- there's no
17 wires on this diagram? Just so the transcript
18 reflects what the witness is testifying to.

19 MR. LANGLEY: That is correct, Your Honor.

20 JUDGE SIPPEL: Right. And this will be -
21 - we know that it's going to get marked eventually,
22 but this is the second one that you put in as a

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1 demonstrative diagram in the context of trying this
2 case. That's all I need to say. I'm sorry, Ms.
3 Kravtin.

4 BY MR. LANGLEY:

5 Q Ms. Kravtin, going back to the diagram, do
6 you see the cable space being represented by the light
7 blue area on this stick diagram?

8 A Yes, I do.

9 Q And that that's supposed to represent one
10 foot of the usable space?

11 A Yes.

12 Q And if the cable company attaches a wire
13 in that one foot of space, that is space that is no
14 longer available for Gulf Power?

15 A Well, again I think we're confusing, in
16 terms of confusing that one foot of space that's shown
17 on that diagram, with really what we're talking about
18 in terms of the APCo test and the issue of rivalrous,
19 and that's why I'm trying to tie them together.
20 Because the issue of whether space is available in
21 terms of the rivalrous of the pole will deal with
22 whether another entity was actually excluded from

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1 space on the pole. We are not talking about that
2 particular foot of the cable space, the cable
3 operator, because they are paying the cable rate for
4 which Gulf is receiving compensation. The issue under
5 APCo is whether is there other entities that are
6 excluded from the pole other than cable because of
7 cable's existence. And in that context, I'm saying
8 that diagram does not represent that there would be a
9 rivalrous condition on the pole, irregardless of
10 whether this diagram is showing cable in that space or
11 not.

12 Q And I must have asked a bad question
13 because I was talking about this pole, and then you
14 answered with the APCo FCC test. And I want to talk
15 about this pole for a second. Is the okay?

16 A Well, I'm trying to keep it to what my
17 testimony is addressing.

18 Q Well, your testimony addresses the concept
19 of rivalrous property, doesn't it?

20 A In the context of that term and the
21 criteria of full capacity and lost opportunity, under
22 the APCo decision. That's my understanding of why we

1 are all here today.

2 Q Ms. Kravtin, can I get an answer to my
3 original question, though, which was if a cable
4 company attaches in that light blue space, that is
5 space that is not -- on this pole that is not
6 available to Gulf Power?

7 MR. SEIVER: I want to object, Your Honor.
8 I wanted to let Mr. Langley do what he wants to do,
9 but we keep hearing about "this pole." This is a
10 demonstrative exhibit, and it's not a pole that
11 exists, and to keep saying "on this pole," I think the
12 record is going to be misleading as if we have a
13 precise pole. I just wanted to make that clear.

14 JUDGE SIPPEL: Well, okay. Go ahead, Mr.
15 Langley.

16 BY MR. LANGLEY:

17 Q Ms. Kravtin, can you answer the question
18 based on this demonstrative aid that's on the screen
19 right now?

20 A I don't believe this demonstrative figure
21 can allow me to answer the question you have asked in
22 a meaningful real-world way. This is a diagram

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1 prepared by Gulf. I can say that Gulf has put those
2 lines on the graph and that as Gulf has shown it, that
3 is what it shows. But it doesn't address economic
4 issues that I raise and that I believe are raised in
5 APCo in terms of rivalrous and whether there is full
6 capacity on that pole and whether there is a lost
7 opportunity to Gulf.

8 MR. LANGLEY: Katy, will you pull up
9 Exhibit 42, page 40. Mind flipping that around for
10 me?

11 BY MR. LANGLEY:

12 Q Ms. Kravtin, have you seen this pole
13 before?

14 A I can't recall. I certainly did review
15 pictures that were in the exhibits that were presented
16 in the hearing room also, and also Mr. Harrelson's
17 testimony. But I wouldn't recognize this particular
18 pole, no.

19 Q And for identification purposes, this is
20 Gulf Power Exhibit 42, page 40. Ms. Kravtin, can you
21 point out where the cable operator is attached on that
22 pole?

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1 A No, I cannot.

2 Q Why don't you assume for me that the cable
3 operator is the second attachment up from the bottom.
4 Do you see what I'm talking about?

5 A Yes, and that would have been what I would
6 have assumed, but I will leave the specific
7 designation to Mr. Harrelson.

8 Q And you are aware that the one foot of
9 space, one foot of usable space we keep talking about,
10 is a function of the 12-inch clearance requirement?

11 A I don't know how to answer that. I mean
12 I certainly understand the one-foot space to be that
13 space that is designated as allocated to cable.

14 Q So in --

15 A Based on a presumption, yes.

16 Q So when the second attachment up attaches
17 to the pole, there's got to be 12 inches above that
18 before any communications wire can go; correct?

19 A Yes, I understand that to be the case.

20 Q And if the next thing up, for example, is
21 a power secondary, it's got to be at least 40 inches?
22 You know that, don't you?

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1 A Yes, I understand that to be the
2 presumption.

3 Q And so when a cable company -- and we'll
4 assume that this one is Cox. When a cable company
5 puts its wire on that pole, page 40 of Gulf Power
6 Exhibit 42, that one foot of space is no longer
7 available for Gulf Power or anyone else, is it?

8 MR. SEIVER: I'm going to object just as
9 a characterization, but I think the witness can --

10 JUDGE SIPPEL: I'll overrule the
11 objection.

12 THE WITNESS: Well, here's my answer. I
13 think I testified to this in some degree, that from an
14 economic standpoint, it doesn't make economic sense to
15 look at this one snapshot at this one point in time
16 and make decisions as to what is available either to
17 the power company for its own use or to another
18 potential attacher; that you need to look at the pole
19 in terms of its dynamic nature and the ordinary and
20 routine processes by which pole companies make space
21 available. So we can't determine based on that and
22 where that wire is as to whether Gulf would be

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1 precluded from having space for either a higher value
2 use of its own or another tap. It's my understanding
3 that Gulf has not provided evidence of situations
4 where it has been able to accommodate its own
5 attachment or that of another based on the presence of
6 a cable attachment. And I believe I cited that
7 language in my testimony.

8 So from my standpoint, Gulf has said that
9 the existence of that cable attachment has not
10 precluded it from being able to accommodate the use of
11 its own of that of another attachment.

12 BY MR. LANGLEY:

13 Q Ms. Kravtin, again I am talking about this
14 pole. Page 40 --

15 A As am I.

16 Q -- Gulf Power Exhibit 42. The one that's
17 on the screen. Not some future pole, this pole.

18 A I'm talking about this pole, too, because
19 this pole would be just as much as a candidate for
20 make-ready as all the other poles which are
21 potentially a candidate for make-ready. Because I
22 can't tell from this photo what the other conditions

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1 around the pole are.

2 Q You are not offering expert testimony on
3 the make-ready process, are you?

4 A I'm certainly providing testimony as to
5 the role of make-ready, relative to the concepts of --
6 the economic concepts of full capacity and lost
7 opportunity. I believe a great deal of my testimony
8 does talk about the role of make-ready. That's
9 different than saying I'm an expert in the engineering
10 process of make-ready. Mr. Harrelson would serve that
11 role.

12 Q You don't know what goes into make-ready?
13 You don't know how that's done, do you?

14 A I certainly understand the basic functions
15 that go into make-ready. That's different from saying
16 that I could, you know, go on the pole and the truck
17 and do it. But I understand the sorts of resources
18 and activities that are involved in rearranging or
19 strengthening or changing out a pole.

20 Q Ms. Kravtin, turn to page 28 of your
21 prefiled written direct testimony. And in the middle
22 of the page, I think this is what you were talking

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1 about when you kept referring to dynamic nature of
2 poles. You say in the middle of the page:

3 "Productive capacity on poles can be
4 harnessed generally as fast as the paperwork can be
5 processed and a technician can be called down to
6 rearrange attachments or a taller pole can be
7 transferred from inventory."

8 Is that accurate?

9 A That is my testimony, yes.

10 Q That's your testimony in this case?

11 A Well, you just read it from my testimony.

12 Q But it's just that simple?

13 A Well, I don't think I address the
14 simplicity of it, but what I do address in terms of
15 the timeframe and ability of the utility to perform
16 make-ready in the normal course of its business
17 routines.

18 Q Well, you don't know how long it takes to
19 perform make-ready, do you?

20 A I don't know the precise time, no. But I
21 know that it is performed in the context of permitting
22 accommodations of attachments on poles and it is

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1 routinely performed, and that it is, you know, one of
2 the processes by which attachments are made.

3 Q You're aware that sometimes it can take
4 months?

5 A Yes, I'm aware that in some cases there
6 will be a variable timeframe for make-ready. What I
7 also understand is the customary way by which Gulf
8 Power and other utilities are able to accommodate
9 attachments so that they don't have to exclude
10 attachments from the pole that come along.

11 Q Ms. Kravtin, I want to go back to the more
12 general concept of a nonrival good. Have you seen
13 charts in economic text that plot on the lower left-
14 hand corner the most rivalrous good and on the upper
15 right-hand corner the most nonrivalrous good?

16 A I'm not sure I have seen such a graph. Do
17 you have one you'd like to show me?

18 Q Sure.

19 MR. LANGLEY: Your Honor, may I approach
20 the witness?

21 JUDGE SIPPEL: For what purpose?

22 MR. LANGLEY: She asked me to show her the

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1 graph that I was referencing.

2 JUDGE SIPPEL: Can we get it up on the
3 screen?

4 MR. LANGLEY: Sure. We can.

5 JUDGE SIPPEL: See if she can work off of
6 -- if Ms. Kravtin can work off the screen. If not --

7 BY MR. LANGLEY:

8 Q Would you go to the third page of that?

9 JUDGE SIPPEL: Is this an exhibit?

10 (Gulf Power Exhibit 71
11 marked for identification.)

12 MR. LANGLEY: I have just marked it as
13 Gulf Power Exhibit 71 and was prepared to give a copy
14 to the Court, counsel, and the witness.

15 JUDGE SIPPEL: All right. Well, you can
16 pass one up here.

17 MR. LANGLEY: May I?

18 JUDGE SIPPEL: Sure. Watch the cable
19 there. I see you have it premarked. Good. Gulf
20 Power Exhibit 71 for identification.

21 BY MR. LANGLEY:

22 Q Ms. Kravtin, you know who Ben Bernanke is,

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1 don't you?

2 A I certainly do now.

3 Q He's the chairman of the Fed?

4 A Yes.

5 Q Were you aware that he had written a
6 widely used economic text?

7 A I certainly was aware that he was in the
8 academic world. I can't say that I was familiar with
9 his particular textbook.

10 Q You went to school with him, didn't you?
11 At MIT? Were y'all not there at the same time?

12 A I don't believe we were.

13 Q Okay. If you would look at the third page
14 of what I have marked as -- marked for identification
15 purposes as Gulf Power Exhibit 71, and you see that
16 part just below the midpoint on the page?

17 A Table 15.1?

18 Q Table 15.1, yes, ma'am.

19 MR. SEIVER: Just for clarity, that's the
20 fourth page of the exhibit.

21 MR. LANGLEY: Oh. I'm sorry. Thank you.

22 BY MR. LANGLEY:

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1 Q Have you seen chart like that before?

2 A No, I have not.

3 Q Do you remember stating what this chart
4 represents? As an economist?

5 MR. SEIVER: Your Honor, since she hasn't
6 seen this chart before, could we give the witness some
7 time to read the text if she needs, or to look at this
8 before she has any more questions?

9 JUDGE SIPPEL: Yes. Take as much time as
10 you need.

11 THE WITNESS: Thank you.

12 JUDGE SIPPEL: Let's go off the record and
13 then you can tell us when you're ready to go.

14 (Discussion off the record.)

15 JUDGE SIPPEL: Back on the record.

16 Mr. Langley.

17 BY MR. LANGLEY:

18 Q Ms. Kravtin, do you now understand what
19 this chart, identified as table 15.1 on the fourth
20 page of Gulf Power Exhibit 71, represents?

21 A Yes, I understand the basic nature of this
22 chart, yes. I am totally familiar with the contents

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1 of it, even though I haven't seen this particular
2 chart.

3 Q And you understand that to the far right
4 of the chart are plotted the most rival goods and on
5 the far right of the chart applied the least rival
6 goods? Is that accurate?

7 JUDGE SIPPEL: You said right both times.

8 BY MR. LANGLEY:

9 Q Excuse me. On the left-hand side of that
10 chart are the least rival goods -- excuse me, are the
11 most rival goods, and on the right-hand chart are the
12 least rival goods.

13 A Yes. But on the left it's showing low
14 volume rival which would mean more rival.

15 Q So are we together now on what this chart
16 --

17 (Laughter.)

18 A Probably as much as the economist -- yeah.
19 I might have presented it a little differently if I
20 was drawing for --

21 Q Let's see if we can draw it out this way.
22 On the bottom left-hand corner, we have private good

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